



**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF VETERANS SERVICES  
1970 Roanoke Boulevard, Bldg. 77  
Salem, Virginia 24153**

**INVITATION FOR BID # 128-09101**

**TITLE: DURABLE MEDICAL, RESPIRATORY EQUIPMENT & RELATED  
SERVICES**

**ISSUE DATE: SEPTEMBER 10, 2008  
SEALED BIDS DUE BY: SEPTEMBER 29, 2008; 2:00 p.m.**

**Robyn Wright  
Procurement Officer  
Telephone: 540-857-6390  
Fax: 540-857-6360  
E-mail: [robyn.wright@dvs.virginia.gov](mailto:robyn.wright@dvs.virginia.gov)**

IFB Number: 128-09101

Issue Date: September 10, 2008

Title: **Durable Medical, Respiratory Equipment & Related Services**  
Commodity Number: 99867

Issuing Agency: COMMONWEALTH OF VIRGINIA  
Virginia Department of Veterans Services  
ATTN: Purchasing Office  
1970 Roanoke Boulevard, Bldg. 77  
Salem, Virginia 24153

Using Agency: COMMONWEALTH OF VIRGINIA  
Virginia Veterans Care Center  
4550 Shenandoah Ave., NW  
Roanoke Virginia 24017

Period of Contract: Date of Award through September 30, 2009  
With (Four [1] successive one-year renewal options)

**Period Of Contract: From Date of Award Through September 30, 2009 \*(Renewable). SEALED Bids Will Be Received Until 2:00 p.m. local time, on September 29, 2008 .**

**IF BIDS ARE MAILED, SEND DIRECTLY TO ISSUING AGENCY AT THE ADDRESS SHOWN ABOVE TO THE ATTENTION OF MS. ROBYN WRIGHT, CPPB, VCO, DIRECTOR OF PURCHASING AND CONTRACTING. IF BIDS ARE HAND DELIVERED, DELIVER TO: DEPARTMENT OF VETERANS SERVICES, PURCHASING AND CONTRACTING OFFICE, BLDG. 77, 1970 ROANOKE BOULEVARD, SALEM, VIRGINIA 24153. IT IS THE CONTRACTOR'S RESPONSIBILITY TO ENSURE THAT BIDS ARE RECEIVED AT THE LOCATION INDICATED BY THE DATE AND TIME ABOVE. THIS COVER SHEET MUST ACCOMPANY YOUR BID, WITH ALL INFORMATION AND SIGNATURES APPLIED BELOW.**

|  |  |
|--|--|
| Submit Comments Questions                        | Interested parties may submit written comments or questions on any aspect of this IFB on or before 3:00 p.m., September 22, 2008. Please submit your comments and questions to Robyn J. Wright by email: <a href="mailto:robyn.wright@dvs.virginia.gov">robyn.wright@dvs.virginia.gov</a> . No other questions will be responded to after September 22, 2008 deadline. |
| Copies of IFB and Answers to submitted Questions | May be obtained at <a href="http://www.dvs.virginia.gov">www.dvs.virginia.gov</a> (Procurement)  |

**In Compliance With This Invitation For Bids and To All The Conditions Imposed Herein, The Undersigned Offers And Agrees To Furnish The Services At The Price(s) Indicated In Section VI, Pricing Schedule.**

|   |                         |                   |
|---|-------------------------|-------------------|
| <b>LICENSED CLASS:</b>  | <b>VA CONTRACTOR #:</b> | <b>SPECIALTY:</b> |
| <b>Name and Address of Firm:</b>  | Date:                   |                   |
|   | Signature:              |                   |
|   | Printed Name:           |                   |
|   | Title:                  |                   |
|   | Phone:                  |                   |
| FEI/FIN Number <sup>1</sup> :   | Fax:                    |                   |
| <b>Are You A Registered eVA Procurement Vendor?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <b>Date Completed:</b>             |                         |                   |
| <b>Are You A Certified Small, Woman, or Minority Vendor?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <b>Certification No.:</b> |                         |                   |

<sup>1</sup> Contractor is REQUIRED to provide a Federal Employer Identification Number, a Federal Identification Number or, in the absence of these numbers, his Social Security Number. This information is being collected for IRS reporting. **This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.**

**TABLE OF CONTENTS**

|      |   |    |
|------|---|----|
| I.   | INTRODUCTION -----                              | 5  |
| II.  | PURPOSE -----                                   | 5  |
| III. | STATEMENT OF NEEDS-----                         | 5  |
| IV.  | DUTIES & OBLIGATIONS                            |    |
|      | A - Duties -----                                | 5  |
|      | B – Services -----                              | 6  |
|      | C - Delivery-----                               | 7  |
|      | D – Statement of Qualifications -----           | 7  |
|      | E – Education & Training-----                   | 7  |
|      | F – Terms of Payment -----                      | 8  |
|      | G – Compliance with HIPAA -----                 | 8  |
|      | H – Price List -----                            | 9  |
| V.   | GENERAL TERMS & CONDITIONS -----                | 12 |
| VI.  | SPECIAL TERMS & CONDITIONS -----                | 15 |
| VII. | METHOD OF PAYMENT-----                          | 17 |
|      | Attachment A – Vendor Data Sheet-----           | 18 |
|      | Attachment B – Business Associate Contract----- | 19 |

**COMPLETE BID PACKAGE MUST BE RETURNED**

## SPECIFICATIONS

**NOTE:** BIDDERS ARE REMINDED TO CAREFULLY EXAMINE THE BID AND SPECIFICATIONS UPON RECEIPT. IF NECESSARY, BIDDERS SHOULD MAKE A WRITTEN REQUEST TO THE PURCHASING AGENCY WHOSE NAME APPEARS ON PAGE 1 OF THE BID, FOR INTERPRETATION OR CORRECTION OF ANY AMBIGUITY, INCONSISTENCY OR ERROR DISCOVERED.

ADDITIONALLY, IF IN YOUR OPINION, ANY OF THE TERMS AND CONDITIONS OF THE SPECIFICATION OR BID PREVENT YOU FROM BIDDING, CONSIDERATION WILL BE GIVEN TO A BIDDER'S REQUEST FOR CHANGE. ANY REQUESTS FOR CHANGES, CLARIFICATIONS, ETC. **MUST** BE SUBMITTED TO THE VIRGINIA DEPARTMENT OF VETERANS SERVICES PURCHASING DEPARTMENT **IN WRITING** AT LEAST **FIVE WORKING DAYS** PRIOR TO BID OPENING. REQUESTS RECEIVED AFTER THAT TIME **WILL NOT** BE CONSIDERED.

ANY CHANGES MADE AS A RESULT OF A WRITTEN REQUEST WILL BE ISSUED VIA A BID AMENDMENT TO ALL PROSPECTIVE BIDDERS AND IF NECESSARY, AN EXTENSION WILL BE MADE TO THE BID OPENING DATE. **AMENDMENTS WILL BE POSTED TO THE DVS WEBSITE ([www.dvs.virginia.gov](http://www.dvs.virginia.gov)).** BIDDERS ARE RESPONSIBLE FOR CHECKING THIS WEBSITE FOR ANY FUTURE AMENDMENTS, ETC., PRIOR TO THE OPENING DATE. ALL AMENDMENTS MUST BE RETURNED PRIOR TO THE OPENING DATE AS SPECIFIED IN THE AMENDMENT. BIDDERS WHO DO NOT RETURN THE AMENDMENTS MAY HAVE THEIR BIDS REJECTED. IF YOU ARE UNABLE TO ACCESS THE INTERNET, CONTACT THE BUYER LISTED FOR A HARD COPY.

BIDDERS ARE CAUTIONED NOT TO CHANGE ANY OF THE TERMS OR CONDITIONS IN THE BID AND/OR SPECIFICATIONS WITHOUT THE WRITTEN APPROVAL OF THE PURCHASING OFFICE. ANY AUTHORIZED CHANGES WILL CONSTITUTE A COUNTER OFFER AND WILL SUBJECT THE BID TO REJECTION.

**GENERAL:** It is the intent of this specification to describe the minimum requirements for providing durable medical and respiratory treatment equipment and supplies for use by the residents of The Virginia Veterans Care Center (VVCC). All items, details of services or features not specifically mentioned which are regularly furnished in order to provide these items shall be furnished at the bid price and shall conform in strength, quality and workmanship to that usually provided by the practice indicated in this specification.

**AWARD AUTHORITY:** The Virginia Department of Veterans Services (DVS) will be the sole judge of the quality and suitability of the equipment, materials and/or services offered in its determination of the successful bidder(s). Award will be made in total to the lowest responsible, responsive bidder who complies with the specification and can meet the delivery requirement as listed in the bid. Costs will be evaluated based on all costs requested in the pricing document for the first year of the contract period.

**BID MODIFICATIONS:** The Purchasing Office has the sole authority for the modification of this specification and/or bid.

**CONTRACT PERIOD:** Pricing must be firm for the first year of the five-year contract period (approximately date of award thru 09/30/13). NOTE: Continuation beyond the second year of the contract will be contingent upon Contractor's successful performance for the period date of award thru 09/30/09.

**ORDER PLACEMENT/PAYMENT:** Purchase orders will be issued as a result of this bid for product to be delivered on an as needed basis. A separate purchase order will be issued for each resident use. The vendor's obligation to deliver such items shall not take effect until the purchase orders are issued. Successful vendors are cautioned not to deliver any products unless they have received the actual purchase order.

The state's normal payment terms are Net 30. Vendors who wish to quote a discount for early payment may do so by noting the discount in the Payment Terms on Page 23 of the pricing document; for example – 1%/10 days = a 1% discount for payment within 10 days. Discounts will be considered when evaluating costs. Vendors may also choose to accept payments via small purchase credit card, which, at this time is MasterCard.

**ADD-ONS:** DVS reserves the right to add, for Veterans Service's use, additional quantities, additional locations, or other types of items that the vendor can supply that are similar to, but not specifically called for, in this bid. The procedures for such additions shall be as follows:

Purchasing will send the vendor a letter requesting pricing for the item(s) to be added. The vendor, within three working days, should respond in writing and include the bid number, contract period and the price for each item to be provided. Upon receipt, DVS will issue a Modification to the contract and change order adding the product(s) to the purchase order. DVS reserves the right to accept or reject prices and obtain bids on the open market for these add-ons.

I. **INTRODUCTION:**

The Virginia Veterans Care Center (VVCC) is located adjacent to the campus of the Virginia Veterans Medical Center in Salem, Virginia and is operated by the Virginia Department of Veterans Services (DVS). This facility features three (3) nursing units with 180-beds. VVCC is the user of this contract and will hereinafter be referred to as the "Facility". Services shall be provided to the residents of the three (3) nursing units.

II. **PURPOSE:**

The intent and purpose of this Invitation for Bid (IFB) is to solicit bids from providers of Durable Medical Equipment (DME), Respiratory Treatment Equipment (RTE), and related supplies and services for adult patient population at VVCC. The intent is to establish a five-year term contract through competitive pricing to provide equipment services and supplies to the residents of the Facility through a rental program.

III. **STATEMENT OF NEEDS:**

The residents of the three (3) nursing units under the care of VVCC shall have available to them Durable Medical and Respiratory Treatment Equipment. Under the terms and subject to the conditions set forth herein. Facility hereby agrees to engage Contractor to provide equipment to the residents of the Facility and the Facility hereby accepts this agreement by the Contractor and the terms and subject to the conditions described in this contract.

IV. **DUTIES AND OBLIGATIONS:**

A. **Duties of Contractor shall:**

1. Provide Durable Medical Equipment, Respiratory Treatment Equipment, Home Medical Supplies, and related supplies and services to the Facility.
2. Agree to comply with all applicable state and federal regulations as it applies to providing durable medical equipment, and/or related services.
3. Participate in performance improvement (PI) initiatives to evaluate the outcomes of Durable Medical Equipment/Respiratory Treatment Equipment products/services for residents discharged from various hospitals as well as the effectiveness of the referral process.
4. Facilitate with Central Supply on appropriate par level inventory of items periodically.
5. Make arrangements with alternate providers of Durable Medical Equipment/Respiratory Treatment Equipment when Contractor is unable to provide it from their own inventory.
6. Assist Nursing staff by training, coordination, installation and/or implementation of setup correlating to Durable medical Equipment/Respiratory Treatment Equipment and/or Medical supplies when needed.
7. Maintain a stock of standard Durable Medical Equipment/Respiratory Treatment Equipment and consumables to facilitate delivery to the VVCC bedside of the following standard durable medical equipment items within two (2) business hours:
  - a. E-Tanks
  - b. E-Tank Carts
  - c. Nebulizer
  - d. O<sup>2</sup> Concentrators (including 10 liter upon request)

- e. O<sup>2</sup> Regulators
  - f. CPAP (with masks)
  - g. Humidifier
  - h. Volume Humidifier bottle
  - i. Suction Pumps
  - j. Suction Canister
  - k. BiPap (with headgear or masks)
  - l. Trach Compressor
  - m. Trach Tubing
  - n. H-Tanks
8. The Contractor will provide loaner equipment at no charge for any durable medical equipment while it is being modified or repaired.
9. The Contractor will provide at least one visit monthly to the claimant by an equipment supply technician to assess the claimant's respiratory status and to maintain the equipment. The contractor will provide to the claimant a respiratory therapist per PRN.
10. When necessary, the Contractor will provide for the trial use of equipment to determine if it is suitable for the patient. Equipment which is not suitable for the patient will be returned at the Contractor's expense and payment will be limited to the rental for the period the equipment was used.
11. The Contractor will grant 80% credit for items removed from the oxygen supply equipment when modifications to the oxygen supply equipment are made.
12. The Contractor will verify use of consumables on a monthly basis and ensure user satisfaction on an on-going basis.
13. The Contractor will respond to all facility questions regarding the equipment and initiate replacement of damaged units and supplies.
14. A warranty, equivalent to the manufacturer's warranty, on all equipment with a value of \$500.00 or greater must be provided. The warranty will include parts, labor, pick-up and delivery. No dealer preparation charges will be allowed, unless prior authorization from the VVCC is obtained. The Contractor will arrange for loaner equipment to be provided at no cost while warranty repairs are being made. The Contractor agrees that all purchased items will be new unless agreed to otherwise.
15. The Contractor warrants that all products delivered pursuant to this contract will be free of defects and will meet the specific requirements prescribed by the treating physician. The Contractor shall correct or replace all noticeable defects in the Contractor's products or services free of charge. Inspection or acceptance of any product or service shall not act as a waiver of this warranty.

**B. SERVICES:** The Contractor agrees to provide the following services in accordance with currently accepted professional standards and applicable federal, state and local law regulations.

1. **ROUTINE** –
  - a. Track all equipment delivered to the Facility on a rental basis and will be solely responsible for the return of all rental equipment, to include resident's last name/room number and four(4) retained in Central Supply as backups.
2. **ROUTINE** – Contractor shall perform preventive maintenance checks on concentrators/compressors every thirty (30) days, which consist of:
  - a. Documentation of such a visit to the Facility for record documentation;
  - b. Clean/Change all filters in the concentrator based on the manufacturer's recommendations;
  - c. Document actual hours of usage;
  - d. Disinfect the concentrator with a wide spectrum disinfectant;
  - e. Check O<sub>2</sub> tanks and calibrate regulators monthly;
  - f. Measurement of oxygen concentration using a hand held analyzer to confirm proper operation based on manufacturer's recommendation;
  - g. Document date of inspection on equipment.
  - h. Inventory equipment located at the VVCC facility, providing a report listing the resident's last name and room number of items in use.
  - i. Provide training to VVCC staff on proper use of CPAP and BIPAP machines.

**C. DELIVERY FOR:**

1. **Urgent/Emergency** needs, the Contractor will agree to delivery Durable Medical Equipment/Respiratory Treatment Equipment to VVCC within two (2) hours during business hours. Equipment for after hours/on call shall be delivered within four (4) hours. Facility needs may vary based upon resident needs. The Contractor agrees to provide equipment needed per Facility request.
2. **Routine Delivery** for replacement supplies shall be delivered on Monday and Thursday each week. Specific delivery requirements shall include:
  - a. Initial delivery of 75 E-tanks with bi-weekly delivery of replacement tanks and pick up of empties.
  - b. Tanks shall be delivered to the back loading dock of the VVCC facility and stored securely in cabinets, switching out empties.
  - c. Other replacement supplies shall be delivered to Central Supply area, located back of service hallway right off of loading dock.

**D. STATEMENT OF QUALIFICATIONS:** The Contractor shall hold a valid professional license as required by Virginia Statute. The bidder shall provide evidence of such license and any applicable Business License with the submitted bid. Failure to submit this evidence with the bid will cause the bid to be determined non-responsive.

During the term of this Agreement, Contractor shall maintain in good standing the following:

1. Appropriate board certification, if applicable.
2. A statement certifying that the Contractor:
  - a. Is not under suspension or subject to any disciplinary proceedings by the department or agency having jurisdiction over the professional activities of the business in the state where the business is located and is not under any formal or informal investigation or preliminary inquiry by such department or agency of possible disciplinary action; and
  - b. Has not been denied staff privileges at any facility. The VVCC reserves the right to restrict an individual's access to

the facility or program if they are determined to pose a threat to security of if they fail to provide the information required for a background check.

- E. EDUCATION AND TRAINING:** The Contractor shall provide in-service education **as requested by VVCC** for the professional nursing staff, therapists and rehabilitation staff, as required by the VVCC in order to enhance the effectiveness and appropriateness of the care rendered to residents of the VVCC. The Contractor shall assure, at no cost to the facility, that all persons working under the terms of the contract meet and maintain any and all legal requirements for licensing and continuing education. Evidence of such shall be presented to the facility upon request.

**F. TERMS OF PAYMENT:**

1. The Contractor shall accept base fee schedules on the usual and customary (UCR) for the services offered in the area of practice.
  - a. Limits on Payments and Liability. When Medicare, Medicaid, or CHAMPUS coverage exists, payment to the Contractor will be limited to the "usual and customary charge" as established between the Contractor and respective Medicare, Medicaid, or CHAMPUS fiscal intermediaries.
  - b. For Blue Cross and Blue Shield participating businesses, VVCC's liability will be limited to the "usual and customary charge." For patients covered by other insurance carriers, the Agency's liability will be limited to the Contractor's usual and customary fee, less any payments made by insurance carriers or other third parties.
  - c. Deductible and Coinsurance Amounts. For patients covered by Medicare, CHAMPUS, or commercial insurance carriers, the Facility's liability will be limited to deductible and coinsurance portions of amounts allowed by the intermediary or insurance carrier, and the Facility will accept liability for those amounts only when the patient is not eligible for the Medicaid program or does not carry a Medicare Supplement policy.
  - d. Patients without Healthcare Benefits or Insurance Coverage. Subject to limitations on payments set forth in this section, the Facility accepts liability for payment of the Contractor's charges for services to VVCC patients whose medical care expenses are not covered by Medicare, Medicaid, private insurance, or other third party sources of payment, and who are referred to the Contractor by members of the VVCC medical staff or by attending physicians of VVCC for patients hospitalized at other facilities. The Contractor agrees that the Facility's liability will be limited to an amount equal to that which would have been paid by The Virginia Medical Assistance Services Program (Medicaid) had such coverage been available.
  - f. Insurance Information. To the extent that such information is available to the Facility, the Facility agrees to provide information on insurance coverage of individual VVCC patients.
  - g. Time and Payment and Acceptance of Terms. The Facility shall pay the Contractor and within thirty- (30) days from receipt of the Contractor's invoice.
  - h. Billing Procedures. Contractors are requested to submit only **itemized billings** to VVCC.
  - i. Submission of Bills and Invoices. Supporting documents should be submitted with the final bills and invoices sent to VVCC and should be addressed as follows:

Attn: Sheri Guerrant  
Virginia Veterans Care Center  
4550 Shenandoah Avenue  
Roanoke, VA 24017

**G. COMPLIANCE WITH HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA):**



By signature on this bid and the completion of Attachment B (Business Associate Agreement), the contractor agrees to comply with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and, in the performance of this contract will:

- Not use or further disclose protected health information (PHI) other than as permitted or required by the terms of this contract or as required by law;
- Use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by the contract;
- Report to VVCC any use or disclosure of PHI not provided for by this Contract;
- Mitigate, to the extent practicable, any harmful effect that is known to the contractor of a use or disclosure of PHI by the Contractor in violation of the requirements of this contract;
- Impose the same requirements and restrictions on its subcontractors and agents;
- Provide access, at the request of VVCC, and in the time and manner designated by VVCC, to PHI in a Designated Record Set, to VVCC or, as directed by VVCC, to an individual in order to meet HIPAA requirements;
- Make available PHI for amendment and incorporate any amendments to PHI;
- Document and provide to Department of Veterans Services information relating to disclosures of PHI as required for VVCC to respond to a request by an individual for an accounting of disclosures of PHI in accordance with the HIPAA Privacy Rule;
- Make its internal practices, books, and records relating to use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services Secretary for the purposes of determining compliance with the HIPAA Privacy Rule;
- At termination of the contract, if feasible, return or destroy all PHI received from, or created or received by the Contractor on behalf of the Contracting Agency (VVCC) that the business associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of information infeasible.

- H. **PRICE LIST:** List the lease price and purchase price per month for equipment listed below. This assumes that ancillary cost such as replacement of faulty equipment, training, etc. are included in each individual units monthly lease price.

| MEDICAL ITEM                   | LEASE PRICE/MONTH (\$) | OPEN MARKET PURCHASE (\$) |
|--------------------------------|------------------------|---------------------------|
| E-Tanks                        |                        |                           |
| E-Tank Carts                   |                        |                           |
| Nebulizer                      |                        |                           |
| O <sup>2</sup> Concentrators   |                        |                           |
| O <sup>2</sup> Regulators      |                        |                           |
| CPAP (with Masks)              |                        |                           |
| Humidifier                     |                        |                           |
| Volume Humidifier Bottle       |                        |                           |
| Suction Pumps                  |                        |                           |
| Suction Canister               |                        |                           |
| BiPap (with headgear or masks) |                        |                           |
| Trach Compressor               |                        |                           |
| Trach Tubing                   |                        |                           |
| H-Tanks                        |                        |                           |

Cost shall include all delivery/travel charges associated:

[illegible]

**All bidders must answer the following questions:**

1. Number of years the Contractor has provided DME/RTE products and/or services: \_\_\_\_\_ years.
2. Number of personnel currently employed by Contractor: \_\_\_\_\_.
3. Has Contractor conducted business with the Commonwealth of Virginia in the past or present? \_\_\_\_\_  
If so, please list Agencies: \_\_\_\_\_

---

---

---

---

4. Describe how the Contractor would propose providing DME to Geriatric patients.

---

---

---

---

---

5. Is the Contractor CHAP accredited? \_\_\_\_\_
6. Does the Contractor provide DME/RTE for adult patients? \_\_\_\_\_
7. Detail how Contractor would propose meeting the requirement for maintaining an in-house inventory of (DME/RTE).

---

---

---

---

---

8. Describe methods utilized for in-service training:

---

---

---

---

---

9. Provide documentation of all current and valid licenses, certifications, and accreditations.

V. **GENERAL TERMS AND CONDITIONS**

- A. **VENDOR'S MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendor's Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at [www.dgs.state.va.us/dps](http://www.dgs.state.va.us/dps) under "Manuals".
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The issuing agency and the Contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*code of Virginia, §2.2-4366*). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The Contractor shall comply with all applicable federal, state and local laws, rules, and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their bids, Bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia, § 2.2-4343.1E*).

In every contract over \$10,000, the provisions in 1. and 2. below apply:

1. During the performance of this contract, the Contractor agrees as follows:
    - a. The Contractor will not discriminate against any employee or national origin, disabilities, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
    - b. The Contractor in all solicitations or advertisements for employees by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
    - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
  2. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their bids, Bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidders, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their bids, Bidders certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By submitting their bids, Bidders certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or bids on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBS:** Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.
- I. **CLARIFICATION OF TERMS:** If any prospective Bidder has questions about the specifications or other solicitation documents, the prospective Bidder should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the Buyer.

J. **PAYMENT:**

1. **To Prime Contractor:**

- a. Invoices for services rendered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges, which appear to be unreasonable, will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges, which are not in dispute (*Code of Virginia § 2.2-4363*).

2. **To Subcontractors:**

- a. A contractor awarded a contract under this solicitation is hereby obligated:
    1. To pay the Subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
    2. To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
  - b. The contractor is obligated to pay the Subcontractor(s) interest at the rate of one percent (1%) per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a Subcontractor may not be construed to be an obligation of the Commonwealth.
3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency, or other appropriate penalties may be assessed in lieu of withholding such payment.

K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions, *VENDORS MANUAL*, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

L. **QUALIFICATIONS OF BIDDERS:** The Commonwealth and/or issuing agency may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidders to perform the services/furnish the goods, and the Bidders shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect Bidder's physical facilities prior to award to satisfy questions regarding the Bidder's capabilities. The Commonwealth further reserves the right to reject any bid if the evidence submitted by, or investigations of, such Bidders fails to satisfy the Commonwealth that such Bidders are properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such

modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

2. The issuing agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the issuing agency a credit for any savings. Said compensation shall be determined by one of the following methods:
  - a. By mutual agreement between the parties in writing, or
  - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the issuing agency's right to audit the Contractor's records and/or to determine the correct number of units independently; or
  - c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the issuing agency with all vouchers and records of expenses incurred and savings realized. The issuing agency shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the issuing agency within thirty (30) days from the date of receipt of the written order from the issuing agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia Vendors Manual. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the issuing agency or with the performance of the contract generally.
- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies, which the Commonwealth may have.
- Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- R. **INSURANCE:** By signing and submitting a bid under this solicitation, the Bidder certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The Bidder further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

**MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:**

- a. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
- b. Employer's Liability - \$100,000.
- c. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
- d. Automobile Liability - \$1,000,000 per occurrence.
- e. Medical Malpractice - \$2,000,000 per occurrence, \$5,000,000 aggregate. Health Care Practitioners will be covered by Health Care Practitioner liability insurance which meets the minimum level required under Section 8.01-581.15 of the Code of Virginia.

**Profession/Service**

Health Care Practitioner (to include Dentists,  
Licensed Dental Hygienists, Optometrists, Registered or  
Licensed Practical Nurses, Pharmacists, Physicians,  
Podiatrists, Chiropractors, Physical Therapists, Physical  
Therapist Assistants, Clinical Psychologists, Clinical  
Social Workers, Professional Counselors, Hospitals,  
or Health Maintenance Organizations.)

**Limits**

\$1,925,000 per occurrence, \$3,000,000 aggregate

(Limits increase each July 1 through fiscal year 2008, as follows:

July 1, 2008 - \$2,000,000. This complies with §8.01-581.15 of the *Code of Virginia*.

- S. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and

specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- T. **NONDISCRIMINATION OF CONTRACTORS:** A Bidder or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by State law relating to discrimination in employment or because the Bidder employs ex-offenders unless the State agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- U. **eVA Business-To-Government Vendor Registration:** The eVA Internet electronic procurement solution, website portal [www.eVA.virginia.gov](http://www.eVA.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in the bid/proposal being rejected.
- a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
  - b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.
  - c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
  - d. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
    - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
    - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.
- V. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the issuing agency shall be bound hereunder only to the extent of the funds available which may hereafter become available for the purpose of this agreement.

## VI. **SPECIAL TERMS AND CONDITIONS**

- A. **ADVERTISING:** In the event a contract is awarded for services resulting from this bid, no indication of such services to VVCC will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.
- B. **AUDIT:** The Contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The issuing agency, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.
- C. **ADDITIONAL USERS:** This procurement is being conducted on behalf of state agencies, institutions and other public bodies who may be added or deleted at anytime during the period of the contract. The addition or deletion of authorized users not specifically named in the solicitation shall be made only by written contract modification issued by this agency or institution and upon mutual agreement of the contractor. Such modification shall name the specific agency added or deleted and the effective date. The contractor shall not honor an order citing the resulting contract unless the ordering entity has been added by written contract modification.
- D. **AWARD TO MULTIPLE BIDDERS:** The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The award(s) will be made to the lowest responsive and responsible bidder(s) meeting the requirements of the solicitation. The Commonwealth reserves the right to conduct any tests it may deem advisable and to make all evaluations. The Commonwealth also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.
- E. **OFFER ACCEPTANCE PERIOD:** Any offer in response to this solicitation shall be valid for thirty (30) days. At the end of the thirty (30) days the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
- F. **CANCELLATION OF CONTRACT:** The issuing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be

terminated by either part, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

- G. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed bid/proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: \_\_\_\_\_  
Name of Bidder/Offendor Due Date Time

\_\_\_\_\_  
Street or Box Number IFB No./RFP No.

\_\_\_\_\_  
City, State, Zip Code IFB/RFP Title

Name of Contract/Purchase Officer or Buyer \_\_\_\_\_

The envelope should be addressed as directed on Page 1 of the solicitation.

If a bid/proposal not contained in the special envelope is mailed, the bidder or offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the bid or proposal to be disqualified. Bids/proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other bids/proposals should be placed in the envelope.

- H. **NEGOTIATION WITH THE LOWEST BIDDER:** Unless all bids are cancelled or rejected, the Commonwealth reserves the right granted by § 2.2-4318 of the *Code of Virginia* to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the agency whenever such low bid exceeds the agency's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by the agency for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The agency shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the agency wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the agency and the lowest responsive, responsible bidder.

- I. **QUANTITIES:** Quantities set forth in this solicitation are estimates only, and the contractor shall supply at bid prices actual quantities as ordered, regardless of whether such total quantities are more or less than those shown.

- K. **REFERENCES:** Bidders shall provide a list of at least 3 references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.

| <u>ORGANIZATION</u> | <u>ADDRESS</u> | <u>CONTACT PERSON</u> | <u>TELEPHONE</u> |
|---------------------|----------------|-----------------------|------------------|
| 1. _____            | _____          | _____                 | _____            |
| 2. _____            | _____          | _____                 | _____            |
| 3. _____            | _____          | _____                 | _____            |

- L. **RENEWAL OF CONTRACT:** This Contract may be renewed by the Commonwealth for a period of **four (4) one (1) year successive year periods** under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately sixty (60) days prior to the expiration date of each Contract period.

1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by no more than the percentage increase/decrease of the "**Other Services**" category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by no more than the percentage increase/decrease of the "**Other Services**" category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

- M. **DRUG FREE WORKPLACE:** The Contractor acknowledges and certifies that it understands that the following acts by the Contractor, its employees, and/or agents performing services on State property are prohibited.

1. The unlawful manufacturing, distribution, dispensing, possession or use of alcohol or other drugs; and
2. Any impairment or incapacitation from the use of alcohol or other drugs (except the use of drugs for legitimate medical purposes). The Contractor further acknowledges and certifies that it understands that a violation of these prohibitions constitutes a breach of contract and may result in default



action being taken by the Commonwealth in addition to any criminal penalties that may result from such conduct.

3. Prior to hiring and at random, the Contractor will be asked to consent to drug testing.

N. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the Commonwealth's satisfaction at the contractor's expense.

J. **eVA Business-To-Government Contracts and Orders:** The solicitation/contract will result in one (1) purchase order(s) with the eVA transaction fee specified below assessed for each order.

1. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
2. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
  - (i) DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
  - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, website portal [www.eva.virginia.gov](http://www.eva.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from [www.eVA.virginia.gov](http://www.eVA.virginia.gov). Contractors should email Catalog or Index Page information to [eVA-catalog-manager@dgs.virginia.gov](mailto:eVA-catalog-manager@dgs.virginia.gov).

## VII. **METHOD OF PAYMENT**

The Contractor shall be paid using one of the following two methods:

- a. MasterCard Credit Card: At the time of order placement, the customer may authorize payment by the MasterCard Corporate Purchasing Card.
- b. Payment will be made, Net 30, after satisfactory performance of the contract in accordance with all of the provisions thereof and upon receipt of a properly completed invoice. DVS shall make monthly payments to the Contractor on the basis of payment during the month following the month in which the service was rendered. DVS reserves the right to withhold any or all payments or portions thereof for contractor's failure to perform in accordance with the provisions of the contract or any modification thereof.
- c. All invoices shall be submitted to:

Accounts Payable  
Department of Veterans Service  
Building 77  
1970 Roanoke Boulevard  
Salem, Virginia 24153

**DEPARTMENT OF VETERANS SERVICES  
VIRGINIA VETERANS CARE CENTER**

**ATTACHMENT A  
VENDOR DATA SHEET**

The following information is required as part of your response to this solicitation. Failure to complete and provide this sheet may result in finding your bid non-responsive.

1. Qualification: The contractor must have the capability and capacity in all respects to fully satisfy all of the contractual requirements.

2. Vendor's Primary Contact:

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

3. Years in Business: Indicate the length of time you have been in business providing this type of service:  
\_\_\_\_\_ Years \_\_\_\_\_ Months.

4. Vendor Information:

FIN or FEI Number: \_\_\_\_\_ If Company, Corporation, or Partnership

Social Security Number: \_\_\_\_\_ If Individual

5. References: Indicate below a list of least three (3) recent references for which you have provided similar services. Include the date service was furnished and the name and address of the person the agency has your permission to contact.

|    |                   |  |          |  |
|----|-------------------|--|----------|--|
| 1. | Company:          |  | Contact: |  |
|    | Phone:            |  | Fax:     |  |
|    | Project:          |  |          |  |
|    | Dates of Service: |  | \$ Value |  |

|    |                   |  |          |  |
|----|-------------------|--|----------|--|
| 2. | Company:          |  | Contact: |  |
|    | Phone:            |  | Fax:     |  |
|    | Project:          |  |          |  |
|    | Dates of Service: |  | \$ Value |  |

|    |                   |  |          |  |
|----|-------------------|--|----------|--|
| 3. | Company:          |  | Contact: |  |
|    | Phone:            |  | Fax:     |  |
|    | Project:          |  |          |  |
|    | Dates of Service: |  | \$ Value |  |

|    |                   |  |          |  |
|----|-------------------|--|----------|--|
| 4. | Company:          |  | Contact: |  |
|    | Phone:            |  | Fax:     |  |
|    | Project:          |  |          |  |
|    | Dates of Service: |  | \$ Value |  |

**ATTACHMENT B**

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF VETERANS SERVICES  
VIRGINIA VETERANS CARE CENTER

Standards for Privacy of Individually Identifiable Health Information

BUSINESS ASSOCIATE CONTRACT

The U.S. Department of Health and Human Services ("HHS") has issued regulations pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), governing the privacy of individually identifiable health information obtained, created or maintained by certain entities. As a valued BUSINESS ASSOCIATE, we will make available and/or transfer certain information, in conjunction with goods or services that are being provided by the BUSINESS ASSOCIATE to the COVERED ENTITY, which is confidential and must be afforded special treatment and protection.

*THIS CONTRACT:*

This Business Associate Contract ("Contract") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by Virginia Veterans Care Center (VVCC), an Agency of the Commonwealth of Virginia (herein referred to as "Covered Entity") and American Mobile Imaging, (herein referred to as "Business Associate").

*WITNESSETH:*

WHEREAS, THE COVERED ENTITY will make available and/or transfer to the BUSINESS ASSOCIATE certain information, in conjunction with goods or services that are being provided by the BUSINESS ASSOCIATE to the COVERED ENTITY, that is confidential and must be afforded special treatment and protection. WHEREAS, THE BUSINESS ASSOCIATE will have access to and/or receive from the COVERED ENTITY certain information that can be used or disclosed only in accordance with this CONTRACT and the HHS Privacy Regulations.

WHEREAS, THE COVERED ENTITY and THE BUSINESS ASSOCIATE agree to limits on use and disclosure established by the Terms and Conditions of this Contract. The BUSINESS ASSOCIATE hereby agrees that it shall be prohibited from using or disclosing the information provided or made available by the COVERED ENTITY for any purpose than as expressly permitted or required by the Contract.

The Terms and Conditions of this Contract shall be effective as of \_\_\_\_\_, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions.

I. DEFINITIONS:

As used in this Contract, the terms below will have the following meanings:

(a) *Business Associate* shall mean (name of business).

(b) *Business Associate Contract (BAC)* means a written contract between a covered entity and its Business Associate. The contractual provisions provide that the Business Associate shall:

- ❖ only use or disclose protected health information (PHI) as permitted under the contract and not in a manner that would violate the Privacy Standards if such actions were taken by the covered entity;
- ❖ use appropriate safeguards to prevent use or disclosure of PHI except as permitted by the contract;
- ❖ report any known misuse of PHI to the covered entity;
- ❖ impose the same requirements on its subcontractors and agents;
- ❖ make PHI and an accounting of disclosures available to individuals as required by the HIPAA Privacy Standards;
- ❖ make its internal practices, books and records relating to use and disclosure of PHI available to the Department of Health and Human Services Secretary; and
- ❖ at termination of the contract; if feasible, return or destroy all PHI received from, or created or received by the Business Associate on behalf of the covered entity that the Business Associate still maintains in any form and retain no copies of such

information or, if such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

- (c) *Covered Entity* shall mean Virginia Veterans Care Center (VVCC), an agency of the Commonwealth of Virginia.
- (d) *Disclosure* shall mean the release, transfer, provision or access to, or divulging in any other manner of information outside the entity holding the information.
- (e) *HIPAA* is the acronym for the Health Insurance Portability and Accountability Act of 1996, which is a federal law that allows persons to qualify immediately for comparable health insurance coverage when they change their employment relationships. Title II, Subtitle F, of HIPAA gives the federal Department of Health and Human Services the authority to mandate and specify the use of standards for the electronic exchange of health care data; to specify what medical and administrative code sets should be used within those standards; to require the use of national identification systems for health care patients, providers, payers (or plans), and employers (or sponsors); and to specify the types of measures required to protect the security and privacy of personally identifiable health care information. Also known as the Kennedy-Kasselbaum Bill, the Kasselbaum-Kennedy bill, K2, or Public Law 104-191.
- (f) *Individual* means the person who is the subject of protected health information and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (g) *Individually Identifiable Health Information (IIHA)*: IIHA shall mean information that is a subset of health information, which can include demographic information collected from an individual; and
- ❖ is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
  - ❖ relates to the past, present, or future physical or mental health care to an individual; or the past, present, or future payment for the provision of healthcare to an individual; and
    - identifies the individual, or
    - with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (h) *Interpretation*: Any ambiguity in this Contract shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.
- (i) *Memorandum of Understanding (MOU)* means an arrangement between a covered entity and its Business Associate that can be used in lieu of a BAC if it contains provisions that are sufficient to accomplish the same objectives as a BAC for safeguarding the use and disclosure of PHI. A MOU is typically used by two government agencies with a working relationship that is required by law, when it is not feasible for such agencies to carry out all of the contractual requirements of a BAC.
- (j) *Protected Health Information (PHI)* means individually identifiable health information:
- ❖ transmitted by electronic media;
  - ❖ maintained in any medium described in the definition of electronic media at 45 CFR 162.103;
  - ❖ transmitted or maintained in any other form or medium.
- PHI excludes individually identifiable health information in:
- ❖ education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g; and
  - ❖ records described at 20 U.S.C. 132g(a)(4)(B)(iv). *Psychotherapy notes* means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group joint, or family counseling session and that are separated from the rest of the individual's medical record.
- (k) *Privacy Officer* means the covered entity's designated official who is responsible for the development and implementation of its HIPAA privacy policies and procedures.
- (l) *Psychotherapy notes* excludes medication prescription and monitoring, counseling session start and stop times, the modalities and

frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

- (m) *Regulatory References*: A reference in this Contract to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- (n) *Required by law* means a mandate contained in law that compels a covered entity to make a use or disclosure of protected health information and that is enforceable in a court of law.
- (o) *Required by law* includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- (p) *Secretary* shall mean the Secretary of the Department of Health and Human Services or his designee.
- (q) *Survival*: The respective rights and obligations of Business Associate under Section 8, "Effect of Termination" of this Contract shall survive the termination of the Contract.
- (r) *Treatment* means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.
- (s) *Use* means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.
- (t) *Catch-all definition*: Terms used, but not otherwise defined, in this Contract shall have the same meaning as those terms in 45 CFR 160.103 and 164.501.

## II. GENERAL CONDITIONS:

### 1. PROVISIONS FOR BUSINESS ASSOCIATE CONTRACTS:

- 1.1 HIPAA privacy regulations allow VVCC to share PHI with Business Associates who are engaged to assist in carrying out various health care activities when VVCC has entered into a Business Associate contract with the individual Business Associate. Such contracts assure that the Business Associate will (i) use the PHI only for the purpose for which it was engaged; (ii) safeguard the information from misuse; and (iii) help VVCC to comply with its duty to provide patients or residents with access to health information about them and a history of certain disclosures.

### 2. THE PARTIES:

- 2.1 Hereby agree that Business Associate shall be permitted to use and/or disclose information provided or made available from the covered entity while protecting the confidentiality and integrity of PHI required law, professional ethics, and accreditation requirements, for the following stated purposes:

- (a) Business Associate is permitted to use information if necessary for the proper management and administration of Business Associate or to carry out legal responsibilities of Business Associate.

- (b) Business Associate is permitted to disclose information received from Covered Entity for the proper management and administration of Business Associate or to carry out legal responsibilities of Business Associate, provided the disclosure is required by law; or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person immediately notifies the Business Associate of any instance of which it is aware in which the confidentiality of the information has been breached.
- (c) Business Associate is also permitted to use or disclose information to provide data aggregation services, as that term is defined by 45 C.F.R 164.501, relating to the healthcare operations of the covered entity.
- (d) Business Associate will establish and maintain appropriate safeguards to prevent any use or disclosure of the information, other than as provided for by the contract.

3. *USE AND DISCLOSURE OF PHI:*

- 3.1 Business Associate shall not use PHI otherwise than as expressly permitted by this Contract, or as required by law. However, Business Associate may use PHI for purposes of managing its internal business processes relating to its functions under this Contract.
- 3.2 Business Associate shall implement and maintain appropriate safeguards to prevent the use and disclosure of PHI, other than as provided in this Contract. Upon reasonable request, Business Associate shall give Covered Entity access for inspection and copying to Business Associate's facilities used for the maintenance and processing of PHI, and to its books, records, practices, policies and procedures concerning the use and disclosure of PHI, for the purpose of determining Business Associate's compliance with this Contract.
- 3.3 Business Associate shall maintain an ongoing log of the details relating to any disclosures of PHI it makes (including, but not limited to, the date made, the name of the person or organization receiving the PHI, the recipient's address, if known, a description of the PHI disclosed, and the reason for the disclosure). Business Associate shall, within thirty- (30) days of Covered Entity's request, make such log available to Covered Entity, as needed for Covered Entity to provide a proper accounting of disclosures to its patients.
- 3.4 Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI received from Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity agree in writing to the same restrictions, terms, and conditions relating to PHI that apply to the Business Associate in this Contract. Covered Entity shall have the option to review and approve all such written agreements between Business Associate and its agents and subcontractors prior to their effectiveness.
- 3.5 Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity available to the Secretary of DHHS or its designee, in a time and manner designated by the Covered Entity or the Secretary, for purposes of determining Covered Entity's compliance with HIPAA and with the Privacy Regulations issued pursuant thereto. Business Associate shall provide Covered Entity with copies of any information it has made available to DHHS under this section of this Contract.
- 3.6 Business Associate shall provide to Covered Entity or an Individual within thirty- (30) days of request by Covered Entity, information collected in accordance with Section 3.3 of this Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.
- 3.7 Business Associate shall report to Covered Entity within thirty- (30) days of discovery, any use or disclosure of PHI made in violation of this Contract or any law. Business Associate shall implement and maintain sanctions for any employee, subcontractor, or agent who violates the requirements in this Contract or the HIPAA privacy regulations. Business Associate shall, as requested by Covered Entity, take steps to mitigate any harmful effect of any such violation of this Contract.

**3.8 Business Associate shall make PHI available for amendment and correction and shall incorporate any amendments or corrections to PHI within thirty- (30) days of notification by Covered Entity.**

**4. *DISCLOSURE OF PHI REQUIRED IN CONTRACTS FOR GOODS & SERVICES:***

**4.1 When Covered Entity contract for goods or services, and disclosure of PHI is a result but not the primary function of such contractual *relationship*, the individual or Entity contracting with the Covered Entity must comply with requirements for Business Associates consistent with HIPAA regulations.**

**4.2 Each Covered Entity contract office shall ensure that all contracts executed by the Covered Entity for goods and services, which also require the Covered Entity to disclose PHI, include provisions to safeguard PHI consistent with HIPAA requirements for Business Associates.**

- ❖ **Covered Entity contract offices shall administer such contracts in accordance with its standard office procedures.**
- ❖ **Each Covered Entity contract officer shall consult with the Covered Entity's privacy official to resolve any issues regarding the compliance of such contracts with HIPAA provisions.**

**4.3 *Obligations of Covered Entity:***

- (a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.**
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.**
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522.**
- (d) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.**

**5. *EXCEPTIONS TO BAC REQUIREMENT:***

**5.1 BACs are not required when:**

- ❖ **The Covered Entity discloses PHI to a health care provider for treatment purposes.**
- ❖ **The financial institution acting on behalf of the Covered Entity receives, uses or discloses PHI to process financial transactions by debit, credit or other payment card; clears checks; initiates or processes electronic fund transfers; or conducts any other activity that directly facilitates or effects the transfer of funds for compensation of health care, when such transaction is conducted by patients or residents of Covered Entities facilities.**
- ❖ **Other laws or regulations govern a Business Associate, and contain requirements sufficient to accomplish the purpose of the BAC.**

**5.2 When a Business Associate is required by law to perform certain functions or activities included in the definition of "Business Associate" on behalf of the Covered Entity, PHI may be disclosed to that entity to the extent necessary to comply with such legal mandate without entering into a BAC. In such instances:**

- ❖ **A MOU should be obtained; or**
- ❖ **The responsible staff should document the inability and reasons that a MOU has not been obtained.**

**5.3 When it is not possible to terminate the MOU, or impractical to include a termination clause within an MOU, the Covered Entity or a facility shall report known violations to the chief privacy officer for reporting to the Secretary of Health and Human Services.**

6. *BUSINESS ASSOCIATE CONTRACT BREACH:*

A BAC breach occurs whenever a Business Associate violates a material term or condition of the BAC.

6.1 When the Covered Entity becomes aware of a breach, it shall:

- ❖ Take reasonable steps to cure the breach, or
- ❖ Terminate the contract, or
- ❖ Report the breach to the chief privacy officer for reporting to the Secretary of Health and Human Services; if termination would be unreasonably burdensome (i.e. no viable alternatives are available).

“Reasonable steps” will vary with the circumstances and the nature of the business relationship and shall be taken in consultation with the chief privacy officer in the Covered Entity.

“Unreasonably burdensome” does not mean it is merely more convenient or less costly to do business with the Business Associate in breach of the contract than with other potential Business Associates.

Any whistle blowing disclosure by the Business Associate does not impose a duty on the Covered Entity to correct, cure, or terminate the relationship.

III. *TERMINATION FOR CAUSE:*

- (a) Covered Entity may immediately terminate this Contract if Covered Entity determines that Business Associate has violated a material term of this Contract. This Contract shall remain in effect unless terminated for cause by Covered Entity with immediate effect, or until terminated by either party with not less than thirty- (30) days prior written notice to the other party, which notice shall specify the effective date of the termination; provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under any Documents or otherwise under this Contract before the effective date of termination. Within thirty- (30) days of expiration or earlier termination of this Contract, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI. Business Associate shall provide a written certification that all such PHI has been returned or destroyed, whichever is deemed appropriate. If such return or destruction is infeasible, Business Associate shall use such PHI only for purposes that make such return or destruction infeasible and the provisions of this Contract shall survive with respect to such PHI.
- (b) Covered Entity may choose to provide an opportunity for Business Associate to cure the violation with written notice of the existence of the violation and provide Business Associate with thirty- (30) days to cure said violation upon mutually agreeable terms. Failure by Business Associate to cure said violation within the terms as mutually agreed shall be grounds for immediate termination and the provisions provided in paragraph (a) of this section shall apply.

IV. *AMENDMENT:*

Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the United States or of this state relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, Covered Entity may, by written notice to the Business Associate, amend this Contract in such manner as Covered Entity determines necessary to comply with such law or regulation. If Business Associate disagrees with any such amendment, it shall so notify Covered Entity in writing within thirty- (30) days thereafter, either of them may terminate this Contract by written notice to the other.



V. *NOTICES:*

Whenever under the Contract one party is required to give notice to the other, such notice shall be deemed given if mailed by first class United States mail, postage prepaid, to the following:

**Business Associate:**

**Attn:**

|  |  |
|--|--|
|  |  |
|  |  |
|  |  |
|  |  |

**Covered Entity:** Virginia Veterans Care Center

**Attn:** Robyn J. Wright, CPPB, VCO

Director of Purchasing & Contracting

4550 Shenandoah Avenue

Roanoke, Virginia 24017

Notice of a change in address of one of the parties shall be given in writing to the other party as provided above.

VI. *DISPUTES:*

If any controversy, dispute or claim arises between the Parties with respect to this Contract, the Parties shall make good faith efforts to resolve such matters informally.

VII. *FEES:*

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this Contract, each party shall bear their own legal expenses and the other cost incurred in that action or proceeding.

VIII. *ENTIRE AGREEMENT:*

The Contract consists of this document, and constitutes the entire agreement between the Parties. There are no understandings or agreements relating to this Contract which are not fully expressed in this Contract and no change, waiver or discharge of obligations arising under this Contract shall be valid unless in writing and executed by the Party against whom such change, waiver, or discharge is sought to be enforced.

*IN WITNESS WHEREOF:*

**BUSINESS ASSOCIATE and COVERED ENTITY have caused this Contract to be signed and delivered by their duly authorized representatives, as of the date set forth above.**

**BUSINESS ASSOCIATE**

**COVERED ENTITY**

**Virginia Veterans Care Center**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Title**

**Corporate Compliance Officer**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

\_\_\_\_\_

\_\_\_\_\_

ADDENDUM TO COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF VETERAN SERVICES  
VIRGINIA VETERANS CARE CENTER

BUSINESS ASSOCIATE CONTRACT

THIS ADDENDUM governs the provision of Protected Health Information (PHI) (as defined in 45 C.F.R. § 164.501 by Virginia Veterans Care Center, an Agency of the Commonwealth of Virginia (Covered Entity) and American Mobile Imaging (Business Associate) for the purposes set forth and pursuant to which the Business Associate is performing functions or tasks on behalf of the Covered Entity.

WHEREAS, the Covered Entity is bound by the regulations implementing the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 (HIPAA), 45 C.F.R. Part 160 and Part 164, Subparts A and E, the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule"); and 45 C.F.R. Part 164, Subpart C, the Security Standards for the Protection of Electronic Protected Health Information ("Security Rule");

WHEREAS, \_\_\_\_\_, as a recipient of PHI from the Covered Entity, is a "Business Associate" as that term is defined in the Privacy Rule;

WHEREAS, pursuant to the Privacy Rule and the Security Rule, all Business Associates of Covered Entities must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI; and

WHEREAS, the purpose of this Addendum is to comply with the requirements of the Privacy Rule and the Security Rule, including, but not limited to, the Business Associate contract requirements at 45 C.F.R. §§164.314(a), 164.502(e), §164.504(e), and as may be amended.

NOW, THEREFORE in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

- I. Definitions: Unless otherwise provided in this Addendum, capitalized terms have the same meaning as set forth in the Privacy Rule or the Security Rule.
- II. Scope of Use and Disclosure by Business Associate of Protected Health Information
  - (a) Business Associate shall be permitted to Use and Disclose PHI that is disclosed to it by the Covered Entity as necessary to perform its obligations under the Business Associate Contract.
  - (b) Unless otherwise limited herein, in addition to any other Uses and/or Disclosures permitted or authorized by this Addendum or Required by Law, the Business Associate may:
    - Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of the Business Associate;
    - Disclose the PHI in its possession to a third party for the purpose of the Business Associate's proper management and administration or to fulfill any legal responsibilities of the Business Associate; provided, however, that the Disclosures are Required by Law or the Business Associate has received from the third party written assurances that (a) the information will be held confidentially and used or further Disclosed only as Required by Law or for the purposes for which it was Disclosed to the third party; and (b) the third party will notify the Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached;
    - Aggregate the PHI with that of other Covered Entities for the purpose of providing the Covered Entity with data analyses relating to the Health Care Operations of the Covered Entity, the Business Associate may not Disclose the PHI of one Covered Entity to another Covered Entity without the written authorization of the Covered Entity involved; and
    - De-identify any and all PHI created or received by the Business Associate under this Addendum; provided that the de-identification conforms to the requirements of the Privacy Rule.

III. Obligations of the Business Associate. **In connection with its Use and Disclosure of PHI, the Business Associate agrees that it will:**

- (a) **Use or further Disclose PHI only as permitted or required by this Addendum or as Required by Law.**
- (b) **Us reasonable and appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this Addendum.**
- (c) To the extent practicable, mitigate any harmful effect that is known to the Business Associate of a Use or Disclosure of PHI by the Business Associate in violation of this Addendum.
- (d) **Report to the Covered Entity any Use or Disclosure of PHI not provided for by this Addendum of which the Business Associate becomes aware.**
- (e) **Require contractors or agents to whom the Business Associate provides PHI to agree to the same restrictions and conditions that apply to the Business Associate pursuant to this Addendum.**
- (f) **Make available to the Secretary of Health and Human services the Business Associate's internal practices, books and records relating to the Use and Disclosure of PHI for purposes of determining the Covered Entity's compliance with the Privacy Rule, subject to any applicable legal privileges.**
- (g) **Within (15) days of receiving a request from the Covered Entity, make available the information necessary for the Covered Entity to make an accounting of Disclosures of PHI about an individual.**
- (h) **Within ten (10) days of receiving a written request from the Covered Entity, make available PHI necessary for the Covered Entity to respond to Individuals' requests for access to PHI about them in the event that the PHI is the Business Associate's possession constitutes a Designated Record Set.**
- (i) **Within fifteen (15) days of receiving a written request from the Covered Entity incorporated any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in the Business Associate's possession constitutes a Designated Record Set.**
- (j) **Implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic PHI that it creates, receives, maintains or transmits on behalf of the Covered Entity, and make its policies and procedures, and documentation required by the Security Rule relating to such safeguards, available to the Secretary of HHS for purposes of determining the Covered Entity's compliance with the Security Rule.**
- (k) **Ensure that any agent, including a subcontractor, to whom it provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect the Electronic PHI; and**
- (l) **Promptly report to the Covered Entity any security incident with respect to Electronic PHI of which it becomes aware.**

IV. Obligations of the Covered Entity. **The Covered Entity agrees that it:**

- (a) **Has included, and will include, in the Covered Entity's Notice of Privacy Practices required by the Privacy Rule that the Covered Entity may Disclose PHI for Health Care Operations purposes.**
- (b) **Has obtained, and will obtain, from Individuals' consents, authorizations and other permissions necessary or Required by Laws applicable to the Covered Entity for the Business Associate and the Covered Entity to fulfill their obligations under the Business Associate Contract and this Addendum.**
- (c) **Will promptly notify the Business Associate in writing of any restrictions on the Use and Disclosure of PHI about the Individuals that the Covered Entity has agreed to that may affect the Business Associate's ability to perform its obligations under the Business Associate Contract and this Addendum.**
- (d) **Will promptly notify the Business Associate in writing of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, if such changes or revocation may affect the Business Associate's ability to perform its obligations under the Business Associate Contract or this Addendum.**

V. Termination.

- (a) **Termination for Breach. The Covered Entity may terminate this Addendum if the Covered Entity determines that the Business Associate has breached a material term of this Addendum. Alternatively, the Covered Entity may choose to provide the Business Associate with notice of the existence of an alleged material breach and afford the Business Associate an opportunity to cure the alleged material breach. In the event the Business Associate fails to cure the breach to the satisfaction of the Covered Entity, the Covered Entity may immediately thereafter terminate this Addendum.**

- (b) Automatic Termination. **This Addendum will automatically terminate upon the termination of the Business Associate Contract.**
- (c) Effect of Termination.
- i. **Termination of this Addendum will result in termination of the Business Associate Contract;**
  - ii. **Upon termination of this Addendum or the Business Associate Contract, the Business Associate will return or destroy all PHI received from the Covered Entity or created or received by the Business Associate on behalf of the Covered Entity that the Business Associate still maintains and retains no copies of such PHI; provided that if such return or destruction is not feasible; the Business Associate will extend the protections of this Addendum to the PHI and limit further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible.**
- VI. Amendment. **The Business Associate and the Covered Entity agree to take such action as is necessary to amend this Addendum from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule and the Security Rule.**
- VII. Survival. **The obligations of the Business Associate under section V.c (ii) of this Addendum shall survive any termination of this Addendum.**
- VIII. No Third Party Beneficiaries. **Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.**
- IX. Effective Date. **This Addendum shall be effect on \_\_\_\_\_.**

**BUSINESS ASSOCIATE**

**COVERED ENTITY**

By: \_\_\_\_\_  
Print  
Name: \_\_\_\_\_  
  
Title: \_\_\_\_\_  
  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print  
Name: \_\_\_\_\_  
  
Title: **Corporate Compliance Officer**  
\_\_\_\_\_  
  
Date: \_\_\_\_\_